IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16380 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHURO @ PRATAP VELJIBHAI @ VELABHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16380 of 2003

MR MB PARIKH for Petitioner No. 1

MR LR PUJARI Ld. AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. Heard Mr.M.B.Parikh, learned advocate for the

petitioner and Mr.L.R.Pujari, learned AGP for the respondent no.3.

2. In this petition under Article 226 of the Constitution of India, the petitioner (detenu) has been challenging the detention order (Annexure-A) dated 8.2.2003 passed under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") by the respondent no.2. Pursuant to the detention order (Annexure-A) the petitioner has been taken in detention on the same day i.e. on 8.2.2003.

3. The grounds of detention (Annexure-B) refers to two cases having been registered against the petitioner (i) for the offences under Section 457, 388, 511 of the Indian Penal Code on 9.1.2000 and other under Section 457, 380 of the IPC on 9.7.2002.

4. It is suggested that the petitioner could be arrested in these criminal cases on 9.1.2003. It is submitted by Mr.Parikh that the acts alleged against the petitioner including the unregistered cases at the most suggest the alleged offences are under the provisions of the Indian Penal Code and there is no question of maintenance of "public order" and it may at the most be a question of "law and order" situation.

5. Reliance is placed on the decision in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Others, 2000 (1) GLR 116. While dealing with Section 3 of the Gujarat Prevention of Anti-Social Activities Act,1985, the Division Bench held that "four cases registered against the detenu under IPC, looking to the incident the cases fall under the maintenance of "Law and Order" and not "Public Order" and therefore, the subjective satisfaction arrived by the Detaining Authority cannot be said to be legal or valid and the order of detention could have been passed on maintenance of "Public Order", detention order quashed".

6. In my opinion, the present case is squarely covered by the decision in the case of Ashokbhai Jivraj Jivabhai Solanki (Supra) and the acts alleged against the petitioner not attracting Section 3 of the PASA Act and therefore, no question of breach of "public order" or "threat to public order" in the incident alleged against the petitioner would attract the maintenance of "law and order". The impugned detention order is liable to be quashed and set aside.

7. In the result, the petition is granted. The impugned order of detention dated 8.2.2003 (Annexure-A) passed by respondent no.2 against the petitioner detenu is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)